

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

SYLVESTER ATWELL BROWN,

Defendant-Appellant.

UNPUBLISHED

October 19, 2006

No. 262734

Oakland Circuit Court

LC No. 2003-193053-FH

Before: Murray, P.J., and O'Connell and Fort Hood, JJ.

PER CURIAM.

Defendant was convicted by a jury of resisting and obstructing a police officer, MCL 750.81d(1), and domestic violence, MCL 750.81(2). He was sentenced, as a fourth habitual offender, MCL 769.12, to 183 days in jail for the resisting and obstructing a police officer conviction, and 93 days in jail for the domestic violence conviction. Defendant appeals as of right. We affirm.

This case arises from a violent fight between defendant and Mary Graham, defendant's girlfriend. Defendant physically and verbally abused Graham, and police were called to their apartment. When Officer Kase arrived at the crime scene, defendant refused to obey Kase's orders. Defendant attempted to flee and, when Kase was trying to handcuff him, wrestled with Kase.

Defendant alleges that there was insufficient evidence to support his conviction for resisting and obstructing a police officer. We disagree. In reviewing the sufficiency of the evidence in criminal trials, this Court must view the evidence de novo in the light most favorable to the prosecutor and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Nowack*, 462 Mich 392, 399-400; 614 NW2d 78 (2000); *People v Lueth*, 253 Mich App 670, 680; 660 NW2d 322 (2002).

The offense of resisting and obstructing a police officer requires proof beyond a reasonable doubt that (1) defendant assaulted, battered, wounded, resisted, obstructed, opposed, or endangered a police officer performing his duties, and (2) defendant knew or had reason to know that the person the defendant assaulted, battered, wounded, resisted, obstructed, opposed, or endangered was a police officer performing his duties at the time. CJI2d 13.1; MCL 750.81d(1); *People v Nichols*, 262 Mich App 408, 410; 686 NW2d 502 (2004). The lawfulness of the arrest is not an element of this offense; a person may not resist and obstruct a police

officer, regardless of whether the arrest was illegal under the circumstances. *People v Ventura*, 262 Mich App 370, 377; 686 NW2d 748 (2004).

Whether the conduct constitutes resisting and obstructing a police officer must be determined on a case-by-case basis. “‘Obstruct’ includes the use or threatened use of physical interference or force or a knowing failure to comply with a lawful command.” MCL 750.81d(7)(a). The defendant must have actually resisted by what he said or did, but physical violence is unnecessary. CJI2d 13.1; see also *People v Pohl*, 207 Mich App 332, 333; 523 NW2d 634 (1994). Failure to obey a police officer’s order to stop, flight or attempted flight from the scene, wrestling with a police officer, and the use of verbal obscenities and threats amount to conduct constituting resisting and obstructing a police officer. See *People v Wess*, 235 Mich App 241, 242, 247; 597 NW2d 215 (1999) (the defendant began running toward the police officers and ignored their orders to stop); *Pohl, supra* at 334 (although the defendant did not physically obstruct the officer, he knowingly fled from the scene, hindering the investigation); *Nichols, supra* at 411-412 (the defendant fought a police officer and ran before he was apprehended, and after he was apprehended, he engaged in a “wrestling match” with the officer).

Viewed in a light most favorable to the prosecution, the evidence presented at trial was sufficient to permit a rational jury to conclude that defendant committed the offense of resisting and obstructing a police officer. *Nowack, supra*. Kase was responding to a police radio call about a domestic violence case. Defendant was in front of the apartment, about 70 feet away from Officer Kase, when the officer called out to him. Defendant stopped and looked around like he was about to flee. Kase ordered defendant to get down to the ground and informed him that he was under arrest. Instead of following Kase’s orders, defendant turned around and ran toward the apartment. Kase pursued defendant with his dog into defendant’s apartment. When Kase was ten feet away from defendant, he ordered him to stop. Again, defendant refused to follow the order, and Kase jumped on his back and tackled him. Despite the repeated orders to stop resisting and to get down to the floor because he was under arrest, defendant swung his arms wildly, failed about, and kicked his legs. Defendant was “fighting to get out from under [Kase].” In addition, defendant was screaming obscenities, and threatened Kase with a lawsuit. Kase testified that he wrestled with defendant for approximately one minute. This evidence was sufficient to establish that defendant’s conduct amounted to resisting and obstructing a police officer. *Nichols, supra*.

Defendant must have had actual, constructive, implied, or imputed knowledge, or “should have had knowledge on the basis of the facts and circumstances of the case,” that the officer was performing his duties. *Nichols, supra* at 414. The jury must objectively determine whether the prosecution met its burden of proof. *Id.* A defendant knows or has reason to know that he is resisting and obstructing a police officer in the performance of his duties upon seeing a police officer in a full uniform with a fully parked police vehicle where the officer makes persistent commands and warnings. *Id.* at 413.

The prosecution presented sufficient evidence to establish that defendant knew or had reason to know he was resisting and obstructing a police officer performing his duties. Two 9-1-1 calls were made from the apartment: one by defendant, and one by defendant’s daughter, Crystal, at defendant’s request. Following her father’s instructions, Crystal requested that police be sent to their apartment. When Kase arrived, Crystal informed defendant that a police officer

was there. Thus, defendant had reason to know that Kase was a police officer who was performing his duties. Moreover, Kase arrived at defendant's house in a "fully marked patrol vehicle, full uniform," and with a police dog on a leash. Defendant argued that he did not know that Kase was a police officer performing his duties because it was dark outside and Kase failed to properly identify himself. However, Kase repeatedly told defendant that he was under arrest and asked him to get down to the ground and stop resisting. Furthermore, assuming *arguendo* that defendant could not see or hear Kase when they were outside, defendant continued to resist even when Kase was in defendant's apartment, only ten feet away from him, and after he had full opportunity to observe that Kase was dressed in full uniform and had a police dog on a leash. Accordingly, we conclude that the evidence, viewed in the light most favorable to the prosecution, was sufficient to show that defendant knew or had reason to know that he was resisting a police officer performing his duties. *Nowack, supra*.

Defendant's argument that he should be acquitted because there was not sufficient evidence that Kase's warrantless entry and arrest of defendant were lawful lacks merit. Resisting arrest and resisting and obstructing a police officer are two different crimes. "Although the lawfulness of an arrest is an element of the former, it is not an element of the latter." *Wess, supra* at 244. The Legislature sought to avoid any harm to the officers or others that could be attendant to an arrest regardless of the legality of the arrest. *Ventura, supra* at 377. Because defendant was not charged with resisting arrest, evidence of the legality of the warrantless entry and arrest is immaterial.

Affirmed.

/s/ Christopher M. Murray
/s/ Peter D. O'Connell
/s/ Karen M. Fort Hood